HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5644 OF 1999.

1. Uttam Bhimrao Adsule,
2. Popat Bhimrao Adsule,
3. Tulshiram Bhimrao Adusle,
All Occu: Agri. R/o: Bidal,
Tal: Man, Dist: Satara. ..Petitioners.

Versus.

1. The State of Maharashtra
Th: Secretary, Revenue &
Rehabilitation Deptt.,
Govt. of Maharashtra,
Mantralaya, Mumbai.

2. The Divisional Commissioner
(Resettlement) Pune Division,
Pune

3. The District Rehabilitation
Officer, Satara.

4. The Special Land Acquisition
Officer No. 16, Satara,
Yashwantrao Chavan Sabhagrah,
Opposit: S.T.Stand Satara. ..Respondents.

Shri. Viabhav V. More h/f Dilip Bodake for the Petitioners.

Shri. Pradeep Patil, AGP for the Respondent -State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : JANUARY 9, 2006.

ORAL JUDGMENT (PER D.G.KARNIK, J.):

1. Petitioners are citizens of India and are brothers, being the children of Bhimrao. Bhimrao was the owner of agricultural lands bearing Survey Nos. 385, 386 and 389 situated at village Bidal, Taluka-Man,

District-Satara. The lands fall under the benefit zone of Andhali Dam.

2. A Notification under section 11 of the Maharashtra Reselttment of Project Displaced Persons Act, 1976 (for short, "the Act.) was issued on 18th April 1980. In view of the notification any transfer of a land falling under the benefit zone of the Project so as to defeat the provisions of the Act was prohibited. The holding of the persons owning lands in the benefit zone as on 18th April 1980 was to be considered and land of the persons holding land in excess of the limit prescribed by the Act was to be acquired on a slab basis for the purpose of resettlement of the persons affected by the project. Accordingly a notice was issued to the petitioners proposing to acquire a portion of their land on the ground that they were holding the land in excess of the prescribed limit. The petitioners objected to the notice contending that there was partition between Bhimrao, the father of the petitioners, and his four sons long prior to the issuance of the notification under section 11. Taking into consideration the land allotted to each of the petitioners, in the partition holding was below the prescribed limit. Therefore, their lands could not be acquired.

. The representation made by the petitioners did not find favour with the District Rehabilitation Officer who was of the opinion that the land holding of the petitioners together was to be taken into consideration, and therefore, the land holding was more than 8-acres, i.e. more than the prescribed limit. He therefore concluded that the petitioners' lands were liable for acquisition.

3. On the facts that the land holding of the petitioners together was more than the prescribed limit of 8-acres, a notification was issued under section 4(1) of the Land Acquisition Act, 1894, proposing to acquire the land admeasuring 1-hectare 64-Rs out of the land bearing Survey No. 386 belonging to the petitioners. That is challenged in this petition.

4. Rule was issued on 18th September 2000 and the respondents appeared and waived services. However, the respondents have not filed any affidavit in reply. Therefore, the averments made in the petition are uncontroverted and are deemed to be accepted. In paragraph 3 of the petition, the petitioners have specifically alleged that lands are ancestral lands and belonged to the joint family and that in the year 1973 partition took place between the deceased Bhimrao, i.e.

father of the petitioners and their deceased brother They have further alleged that they made an application to the Talathi for making necessay entries in the revenue records in accordance with the partition and their application was accepted and Mutation Entry No. 7858 was also effected on 23rd March 1979. Petitioners have annexed a copy of mutation entry No. 7858 affected on 17th June 1978. The said mutation entry states that there was partition between Bhimrao (father of the Petitioners) and his four sons, including Vishwanath who had died, about five years ago. Thus, the statement made by the petitioners on oath that - there was partition in the family prior to the issuance of the notificationunder seciton 11 of the Act is supported by mutation entry No. 7858. We therefore have no hesitation in accepting the statements made on oath, which are corroborated by the petitioners' application and the mutation entry made in the revenue records.

5. Perusal of the extract of Khate Utaras also show the details of area of the land owned by the petitioners. Land holding of the petitioner No.1 Uttam after partition is 1-Hectare 73-Rs, the land holding of the petitioner No.2 Popat is 1-Hectare 69-Rs and land holding of the by petitioner No.3 Tulshiram is 1-Hectare 68- Rs. Thus, land holding of each of the petitioners

is less than 3-Hectares 23-Rs. (8-Acres). As per Part-II of Schedule-A of the Act only in case of persons holding land in excess of 3-hectare 23.75-Rs, a part of their land is to be acquired. Since the land holding of each of the petitioners was less than 8-Acres on the date of the notification under section 11, the petitioners' land was not liable to be acquired.

6. In the circumstances, the notification issued under section 4 of the Land Acquisition Act was without any authority of law and is, therefore, required to be quashed, and is accordingly quashed. Rule is accordingly made absolute in terms of prayer clause (b) which reads thus:

> "(b) This Hon'ble Court may be pleased to issue a writ of mandamus or writ of certiorari or any other appropriate writ/order/direction/ or certiorari under Article 226 of the Constitution of India, 1950 by quashing and setting aside the Acquisition proceedings initiated by Respondents by issuing notification dated 12.5.1992 bearing No. Land Acquisition/ Punarv /3/Notebook/ 4192 which is published u/s 6 of the Land Acquisition Act in Newspaper Daily "AIKYA" in respect of petitioners land bearing Gat No. 386 admeasuring about 1-Hectare and 62-R situated at village Bidal, Tal: Man, District: Satara."

6. There shall be no order as to costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**